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Panel: The Future of Democracy Promotion After Iraq

*Introduction provided by Professor Greg Fox **

Democracy promotion became a big business in the 1990s. Following the end of the Cold War, there was a surge of optimism in the West about the possibility of spreading democracy to areas where it had not flourished before.¹ This rather unified sense of purpose appeared to leave behind Cold War-era debates about whether Western advocates of democracy, and in particular the United States, were simply promoting their anti-Communist geo-strategic interests in more acceptable terms. And indeed, democracy promotion missions, particularly though not exclusively of the United Nations, expanded rapidly in the 1990s.² The Secretary-General and others accordingly pronounced democracy a universal value that would enhance the well-being of persons in every region of the world.³

But the slow-motion train wreck we are now witnessing in Iraq has resurrected many of the objections one heard in the early days of that debate. Some observers dispute the wisdom, morality and motivation of outsiders seeking to implant

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1. See *Report of the Secretary-General, An Agenda for Democratization*, UN Doc. A/51/761 (1996).
2. See ERIC C. BJORN LUND, *BEYOND FREE AND FAIR: MONITORING ELECTIONS AND BUILDING DEMOCRACY* 43 (2004).
3. See The Secretary General, *Report of the Secretary-General, In Larger Freedom*, ¶148, delivered to the General Assembly, UN Doc. A/59/2005 (2005) ("The Universal Declaration of Human Rights, adopted by the General Assembly in 1948, enunciated the essentials of democracy. Ever since its adoption, it has inspired constitution-making in every corner of the world, and it has contributed greatly to the eventual global acceptance of democracy as a universal value.") (citation omitted).

democratic institutions in other countries.⁴ Political change, it is said, must begin locally and cannot be artificially enhanced or indeed initiated by foreigners.⁵ Thomas Carothers has offered a related critique in a recent article entitled “The Backlash against Democracy Promotion.”⁶ Carothers focuses on countries like Russia, Uzbekistan, Belarus, Tajikistan, Zimbabwe, and Eritrea, where there seems to be a pushback against outside efforts to supervise free and fair elections and other reforms that are now part and parcel of the democracy promotion package. Carothers argues that a common thread in these cases is the view of the United States as a shadowy force, working behind the scenes to aid pro-democratic movements.⁷ Because of Iraq and other focal points of anti-Americanism, Carothers adds, these quasi-conspiracy theories have found fertile soil.⁸

Carothers does acknowledge that backlash by these regimes may simply be the result of democracy promotion in fact succeeding, thus posing a greater threat to autocrats around the world. But this factor is secondary to the damage wrought by the rhetoric and policies of the Bush Administration. The positive associations that used to accompany US democracy policies have been undermined in the eyes of much of the world. In Carothers’ view, “Washington’s use of the term ‘democracy promotion’ has come to be seen overseas not as the expression of a principled American aspiration but as a code word for ‘regime change’ – namely, the replacement of bothersome governments by military force or other means.”⁹ The Administration thus finds itself in the difficult position of creating more backlashes against democracy promotion the more it protests the sincerity of its efforts.

Our panelists will ask whether the broad or narrow version of this critique – or indeed some other version – is in fact accurate. Did the 1990s teach negative lessons about the limits of external democracy promotion? Or is the current backlash simply a reaction to specific policies that have few broader policy implications?

I would like to make a second introductory point, motivated by something you

4. See generally Jennifer Windsor, *Advancing the Freedom Agenda: Time for a Recalibration?*, 29 WASH. Q. 21 (2006); Steven R. Weisman, *Democracy Push by Bush Attracts Doubters in Party*, N.Y. TIMES, Mar. 17, 2006, at A1; William I. Robinson, *What to Expect from US “Democracy Promotion” in Iraq*, 26 NEW POLITICAL SCIENCE 441 (2004).
5. See Richard N. Haass, *Freedom Is Not a Doctrine; Promoting Democracy Is the Wrong Priority for Foreign Policy*, WASH. POST, Jan. 24, 2005, at A15; See generally Eric J. Hobsbawm, *Spreading Democracy*, FOR. POL., September/October 2004.
6. See generally Thomas Carothers, *The Backlash Against Democracy Promotion*, 85 FOR. AFF. 55 (2006).
7. *Id.* at 59.
8. *Id.* at 64.
9. *Id.*

may have noticed about our panel: although this is a conference about international law, three of our four speakers are political scientists. Not to worry: the issue of democracy promotion is of great interest to international lawyers, as evidence in the broad and deep practice of international organizations and other legal actors.¹⁰ There is, simply stated, now a great deal of law on what Thomas Franck has called the “democratic entitlement.”¹¹ Let me describe three areas in which democratic norms have flourished. First, all major human rights treaties guarantee a right to political participation, most of them building on Article 21 of the Universal Declaration of Human Rights.¹² Second, many international organizations, most prominently the United Nations but also the European Union, the OAS, the Commonwealth and others have taken up democracy promotion as one of their central goals and have dedicated substantial resources to election monitoring and a whole variety of other activities.¹³

Third, in building an institutional infrastructure around democracy promotion, these and other international organizations have developed an innovative enforcement mechanism: refusing membership or full membership rights to non-democratic states. The European Union requires states to be democratic as a precondition to membership.¹⁴ Others, such as the Organization of American States, the Organization for Security and Cooperation in Europe, the African Union, the Commonwealth and MERCOSUR, may suspend states whose

10. See generally *DEMOCRACY AND INTERNATIONAL LAW* (Richard Burchill ed., Ashgate Publ'g 2006); *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW* (Gregory H. Fox & Brad R. Roth eds., Cambridge Univ. Press 2000).
11. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).
12. Article 21 states, “[t]he will of the people shall be the basis of the authority of government.” Universal Declaration on Human Rights, GA Res. 217 (III), at 75, U.N. Doc. A/810 (Dec. 10, 1948). See also, International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, S. Exec. Doc. E, 95-2, 999 U.N.T.S. 171, 179; First Protocol to the European Convention on Human Rights and Fundamental Freedoms, art. 3, Mar. 20, 1952, 213 U.N.T.S. 262; American Convention on Human Rights, art. 23, Nov. 22, 1969, O.A.S.T.S. No. 36, 9 I.L.M. 673; African [Banjul] Charter on Human and Peoples' Rights, art. 13, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58.
13. See EDWARD R. MCMAHON & SCOTT. H. BAKER, *PIECING A DEMOCRATIC QUILT* (Kumarian Press 2006); *THE UN ROLE IN PROMOTING DEMOCRACY: BETWEEN IDEALS AND REALITY* (Edward Newman & Roland Rich eds., United Nations Univ. Press 2004); BJORN LAND, *supra* note 2.
14. The Maastricht Treaty on European Union provides that democracy and respect for human rights, as set forth in the European Convention on Human Rights, shall be pre-conditions for membership in the European Union. Treaty on European Union, Title I(F), Feb. 7, 1992, 31 I.L.M. 247.

democratic regimes are interrupted or removed.¹⁵ These mechanisms highlight a unique legal aspect of democracy promotion: its necessary connection to the legitimacy of national governments. If democratic procedures are in place that accord with international standards, especially regarding elections, a government that emerges from those procedures will enjoy a cloak of legal legitimacy. The essential theory of all democratic systems is a link between the will of the people and the power to govern. The democratic entitlement simply embeds this idea in international law. Thus, when a democratically elected government is overthrown or otherwise compromised, its legal capacity to represent the state is also compromised. If an international organization takes this principle of democratic legitimacy seriously, it cannot treat the non-democratic government as the legitimate representative of the state.

None of this is to say that the international law addressing democracy

15. The Washington Protocol to the OAS Charter provides for the suspension from the General Assembly of any member state whose democratically constituted government has been overthrown by force. OAE/Ser.P, AG/doc.11 (XVI-E/92), rev. 1 (1992). In the 1991 Moscow Document of the CSCE, the OSCE's predecessor, the participating states declared that they "condemn unreservedly forces which seek to take power from a representative government of a participating State against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order" and would "support vigorously, in accordance with the Charter of the United Nations, in case of overthrow or attempted overthrow of a legitimately elected government of a participating State by undemocratic means, the legitimate organs of that State upholding human rights, democracy and the rule of law, recognizing their common commitment to countering any attempt to curb these basic values." Conference on Security and Co-operation in Europe, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Oct. 3, 1991, paras. 17.2 & 17.3, 30 I.L.M. 1670 (1991). Article 30 of the Constitutive Act of the African Union provides that "Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union." Constitutive Act of the African Union, Art. 30, July 11, 2000, OAU Doc. CAB/LEG/23.15, available at <http://www.africa-union.org>. In the Commonwealth, the 1995 Millbrook Action Programme provides that "in the event of an unconstitutional overthrow of a democratically elected government" a variety of steps may be taken, including "pending restoration of democracy, exclusion of the government concerned from participation at ministerial-level meetings of the Commonwealth, including Commonwealth Heads of Government Meetings" and "suspension of participation at all Commonwealth meetings and of Commonwealth technical assistance if acceptable progress is not recorded by the government concerned after a period of two years." The Millbrook Commonwealth Action Programme on the Harare Declaration, paras. I(B)(3)(vi) & (vii) (1995), available at http://www.thecommonwealth.org/Internal/20723/34458/the_millbrook_commonwealth_action_programme. MERCOSUR's 1996 Protocol of Ushuaia provides that any disruption of democracy in a member state may lead to the suspension of that state's right to participate in MERCOSUR organs and a suspension of its rights under the preferential trade instruments promulgated by the organization. *Protocol de Ushuaia Sobre Compromiso Democrático en el Mercosur, la Republica de Bolivia y la Republica de Chile*, arts. 4 & 5, July 24, 1998, available at <http://www.ohchr.org/english/law/compilation1D.htm#ushuaia>.

promotion answers every question of political democracy or that it enjoys universal acceptance. Neither is true. But as our panel of (mostly) political scientists addresses democracy promotion from (predominantly) empirical and policy-based perspectives, keep in mind that the questions they raise speak to an increasingly comprehensive body of international norms.

Greg Fox, Moderator

My name is Greg Fox and I teach in the law school at Wayne State University. This is the panel on the Future of Democracy Promotion After Iraq. After we gave the panel this name, I realized that at this moment we were not actually “after Iraq.” But I think the meaning of Iraq in the world of democracy promotion will become clear during the course of the discussion. I would like to explain why this topic seemed interesting. It really stems from a discussion that I think is happening both within foreign policy and international law circles, but also in the sort of general media, about the wisdom of democracy promotion.

Democracy promotion became, in a sense, a big business in the 1990s. There was a surge of optimism after the end of the cold war about the possibility of spreading democracy throughout the world. But what you might describe as the slow train wreck in Iraq has resurrected a lot of debates that to some people seemed, if not completely resolved, close to resolution, before Iraq. One starts to hear arguments about the wisdom, the morality, the motivation for outsiders seeking to implant democratic institutions in other countries. And those arguments are made with increasing frequency.

So having a panel of experts on this topic seemed like a very good idea. The panel was also partly motivated by a very interesting article which is included in the MCLE materials that were distributed to you. The article by Thomas Carothers, which appeared in *Foreign Affairs* last year, is entitled “The Backlash Against Democracy Promotion.”¹⁶ Carothers’ focus is much broader than Iraq; he discusses places like Russia, Uzbekistan, Belarus, Tajikistan, Zimbabwe, Eritrea, and others, where there seems to be a pushback against outside efforts to have clean elections and other reforms that are part and parcel of the democracy promotion package.

Carothers says that the common thread among these reactions is the view of the United States as a shadowy guiding force (those are his words) behind the rise of pro-democratic movements in different countries. He also says that the other reasons why anti-American sentiment seems to resonate around the world, now

16. Thomas Carothers, *The Backlash Against Democracy Promotion*, 85 *FOREIGN AFFAIRS* 55, March/April 2006.

more than ever, have made those sorts of accusations find fertile soil.

He does acknowledge that these problems may simply be the result of democracy promotion being successful and thus more threatening to autocrats around the world. But he also focuses on both the rhetoric and policies of the Bush Administration as being particularly problematic. This combination of talk and policy has brought about a perception that democracy promotion is not about a clean process, but about specific outcomes. This might make democracy promotion, if you view it that way, indistinguishable from a policy of regime change which is also associated with this administration.

I would like to take a moment to mention the variety of reasons why the subject of democracy promotion has been of interest to international lawyers. First, all major human rights treaties guarantee a right to political participation in some form, most of them deriving from Article 21 of the Universal Declaration of Human Rights.¹⁷ Second, many international organizations, most prominently the United Nations but also the European Union, the Organization of American States, the Commonwealth and others, have taken up democracy promotion as one of their central goals and have dedicated substantial resources to election monitoring and a whole variety of other activities.

There have been some rather interesting enforcement mechanisms that have developed around the idea of democracy promotion. We will be hearing a little bit about one such mechanism in the Organization of American States. Those mechanisms involve what I think is the central legal problem in democracy promotion — governments that do not retain power through democratic means are, according to a norm of democracy, illegitimate. That is, they do not have the normal agency relationship that governments usually have with states. If you take a strict view of that idea of legitimacy, such governments are not entitled, for example, to represent that state in an international organization. And so there have been, for example, a number of credentials fights at the United Nations, most prominently in the cases of Haiti and Cambodia where two delegations showed up, both purporting to represent the same state, and a decision had to be as to which one was the appropriate one to seat.

All of this can be put under the umbrella of what Thomas Franck has called the democratic entitlement.¹⁸ There is now a substantial amount of practice and a

17. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

18. See generally Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L. L. 46 (1992).

substantial amount of commentary on that practice in international law involving issues of democratic governance.

*Larry Diamond, Panelist**

Actually I do not want to talk about Iraq. I have been trying to get away from talking about Iraq. I think Iraq is probably lost for a generation, and certainly any prospect of promoting democracy in Iraq has been lost. The mistake of having invaded in the first place has very significantly set back both our moral authority and our geopolitical capacity to promote democracy elsewhere in the world, which is what I want to talk about.

Let me begin by saying that it could be argued that President Bush is the most pro-democracy and pro-democracy-promotion president in American history. Certainly no previous American president has so elevated the goal of promoting democracy and freedom, which he regards as God's gift to humanity as the central goal of his foreign policy. And so much that he has done, including a supposed reorientation of our foreign policy toward the Middle East, a dramatic increase in overall foreign aid, the biggest increase in foreign aid in several decades even absent our intervention in Iraq, the creation of a whole new facility for democracy and development assistance in the Millennium Challenge account, nearly doubling the budget of the National Endowment for Democracy and much more, are indicators of this increased political commitment by this administration to the promotion of democracy.

Another democracy promoting activity, at least in theory, is the creation of a new specific instrument to promote democracy and development in the Middle East called the Middle East Partnership Initiative. In November of 2003, President Bush gave a very historic speech marking the twentieth anniversary of the creation of the National Endowment for Democracy, in which he, in theory, overturned sixty years of American foreign policy in the Middle East saying this was all a mistake, including the foreign policy of his father during the first President Bush's four years in office. He said that in seeking to purchase stability at the price of

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democracy in the Middle East, we got neither stability nor democracy. We need a new approach that is going to put democracy first.¹⁹

Bush also pressured Hosni Mubarak in Egypt to hold competitive presidential elections. Of course he proclaimed the triumph of the free elections that were held in Iraq during the calendar year of 2005 and the whole American political project of the supposed transition to democracy there. The elections in Palestine, the Cedar revolution in Lebanon, etcetera, etcetera. And then all of a sudden the Bush Administration found that Islamists were winning all these elections. Hamas in Palestine, Hezbollah in Lebanon to some extent, the Muslim Brotherhood making quite stunning electoral gains in Egypt. The Muslim Brotherhood likely would have gone further if Mubarak had not stepped in and brutally repressed and rigged the process of the parliamentary elections in later rounds.

I think it is apparent in the last year or two that the Bush Administration has started backing off the democratic pressure on Egypt and elsewhere in the region, has grown nervous about what has happened in Palestine, to the point of cutting off assistance to its elected government.

And this is only the latest in a long, sad string of similar failed attempts about which any expert on Latin America could give you chapter and verse. So if Sharon wants to, I am sure she can give other examples of the duplicity, hypocrisy, inconsistency of American efforts to promote democracy going back throughout the twentieth century, if you start with Woodrow Wilson and his idealistic commitment to promoting democracy.

So once again we get nervous about the result and we pull back. So far we have not actively participated in overthrowing democratically elected governments, like we did in Guatemala and Iran, for example, in the 1950s, or Chile in 1973, but we certainly have once again lowered our ambitions and principles and dashed the hopes and confidence of democrats in the Middle East. This has led them to be very cynical. As a result of our massive incompetence in Iraq, many democrats in the region thought that it was a deliberate act to sabotage the country and keep it weak.

Now the result of our failure in Iraq and similar inconsistencies elsewhere, and the general unilateral actions on the part of the Bush Administration, there has been a backlash, and a very severe backlash, as Carothers writes. There has been backlash against, first of all, democracy promotion. Where you see this backlash

19. President George Bush, Remarks by the President at the 20th Anniversary of the National Endowment for Democracy (Nov. 6, 2003), *available at* <http://www.whitehouse.gov/news/releases/2003/11/20031106-2.html>.

in many countries, in Russia, in Venezuela, in Uzbekistan, in Belarus, throughout Central Asia, and increasingly globally, because autocrats are learning from one another. They are borrowing techniques of frustration and criminalization of international flows of democracy assistance to shut down even fairly innocent and transparent civil society enterprises.

This has gone very far in some of these countries and made it very difficult for the conventional forms of democracy assistance to proceed. Beyond that there has been a backlash against democracy itself in recent years. I refer you to the latest annual report of Freedom House, where you can see that there are very significant elements of erosion of levels of political freedom and civil liberties in many countries in the world.²⁰

I think this represents a trend in terms of the global democracy recession that might be dated to the military coup in Pakistan in October of 1999, but is gathering steam now with the military coup in Thailand last September, the deepening of authoritarianism in Venezuela and Russia, the fact that Nigeria ceased to be a democracy after the rigging of the 2003 elections. (Nigeria does not seem entirely on track to climb out of that hole despite the elections that are supposed to take place this year but probably will not be successful.)

Oil is a very big factor here, by the way. Russia, Venezuela and Nigeria, three of the most prominent democracy reversals in recent years are all extremely oil-dependent states. There is not a single country in the world that derives at least two-thirds of its export earnings from oil that is a democracy.²¹ This is worth keeping in mind.

Political crisis, scandal, and calls for presidential resignation have created a sense of crisis about democracy even in countries like the Philippines and Taiwan where democracy survives. And you know about the crisis over the 2006 presidential election in Mexico. So we are in a difficult period and in this difficult period I think we need a new strategy. First of all, we urgently need to shore up the existing democracies to help them make progress toward consolidation of democracy. One of the problems here, the reason why democracy is so fragile, is it just is not working very well to deliver what people want of democracy — which is not only economic growth but a decent level of a rule of law, protection for human rights, control of corruption as well as competent and transparent government.

20. FREEDOM HOUSE, *FREEDOM IN THE WORLD* (2006), available at <http://www.freedomhouse.org> (follow link to Freedom in the World).

21. LARRY DIAMOND, *THE SPIRIT OF DEMOCRACY: THE STRUGGLE TO BUILD FREE SOCIETIES THROUGHOUT THE WORLD* (New York Times Books, 2007, forthcoming).

So part of the challenge in promoting democracies, which we have found in studies of democracy over the last twenty years, is to create a stronger and more competent state itself. States need more capacity to deliver needed services, but more accountability and transparency too. This requires reforms to construct or strengthen various agencies to provide what we call horizontal accountability or separation of powers, checks and balances. Agencies such as counter-corruption agencies, audit agencies, ombudsmen, freedom of information laws are all needed. Obviously securing political independence is always a very dicey thing, and professional capacity and recruitment and training of prosecutors and judges is enormously important here.

Strengthening the autonomy and professionalism of independent central banks and electoral commissions is another important element here. We need to go beyond only giving assistance to these state organizations where there are officials who are willing and able, and have the sense of purpose, to make use of these aid flows in a way to strengthen their own organizations and to be serious agents of accountability. We also need to give high priority to providing significant technical, as well as financial assistance, and promote political solidarity to the civil society organizations, the think tanks, the bar associations, the social movements that are putting forth ideas, agendas, advocacy to try to strengthen these rule of law, good governance, horizontal accountability, state building institutions in these emerging but still weak democracies.

So that is one set of challenges. A second set is that we need to create the incentives, the political will for political actors to take these difficult steps. And I think we are not going to get there unless we condition our aid and trade flows much more intensively on a demonstration of a sense of purpose on the part of these governments, to be serious about implementing rule of law and good governance reforms.

The Millennium Challenge Account was a step in this direction.²² It provides a new foreign aid vehicle meant to rise to the level of \$5 billion a year, but when you are pouring three-fourths of a trillion dollars into Iraq and Afghanistan, there is not a lot left to develop the rest of the world. So it is still stuck at around a billion dollars or a little more. But in any case, the logic is that we set standards and expectations on several dimensions of good governance and development commitment, and states then compete against one another for the money. I think the Millennium Challenge Account is flawed, because it is grading all of these

22. See <http://usinfo.state.gov/journals/ites/0303/ijee/ijee0303.htm>.

states on a curve.

We need certain absolute standards for flows of aid, like the absolute standards that the European Union has and applies in terms of its accession criteria for admission to the European Union. I do not think they have to be that detailed and invasive, but there do have to be certain absolute standards of commitment to human rights, rule of law, transparency, good governance, judicial independence, control of corruption if states want these extremely concessional aid flows.

Third, we need to strengthen regional and international institutions in their commitment and capacity to promote and defend democracy like the Organization of American States (OAS) for example. There has been some progress here. The African Union has been moving in this direction but only on paper. Its African peer review mechanism is largely superficial. If you could get that to be a serious mechanism of collective scrutiny and pressure for better governance, that would be an important step.

Fourth, we need to find ways to assist democrats in these closed and repressive circumstances. Particularly where there is a backlash against the now established mechanisms of democracy promotion, these traditional mechanisms are not going to work. We need to find new ways, technologically, to give them solidarity and assistance.

Fifth, there are some crucial things we need to stop doing, like stop acting so arrogantly and unilaterally. We need to stop using unilateral force as a means to try and change the world. I have said we need to be more consistent in the way we go about things. We need to find ways, working with our democratic partners, Europe, Japan, the OAS and so on, to rally moderate states to a collective cause of democracy promotion.

And, finally, I will just mention that we really need to drastically reduce our dependence on foreign oil. Because unless you get the price of oil down significantly, I think, below \$50 a barrel, these leading backlash states like Russia, Venezuela, Nigeria, and all the states of the Middle East, Iran and so on, just have too much cash in their pockets not to use it to frustrate democracy promotion initiatives in their regions.

*Sharon Lean, Panelist**

You might ask, what is a Latin Americanist doing on a panel about the future of democracy promotion after Iraq? Carothers' article on the backlash against democracy promotion argues that this backlash has affected regions beyond the Middle East.²³ I agree with him, and see such a backlash affecting regional efforts to support democracy in the Americas. I also believe that we can learn about general prospects for democracy promotion by examining efforts in Latin America, which is, arguably, the region with the longest and most extensive track record of democracy promotion activities, certainly of those by the United States. There are, for example, a number of very interesting international instruments that have been developed in Latin America that are worth thinking about in comparative context.

My remarks today will focus on the question of the future of democracy promotion in the Americas. What will be the shape of democracy promotion activities in Latin America in the coming years? Answering this question requires four elements: a definition of what we mean by democracy promotion; an understanding of the history of democracy promotion in the region; an understanding of regional tools or instruments for promoting democracy; and perhaps most importantly, an assessment of how well those tools can be utilized in the current political context.

I will first briefly discuss the first two, the definition and the history. I will spend more time on tools, because I assume that will be of particular interest to an international legal audience. I will also comment on the current political context and what it means for democracy promotion prerogatives in the region and perhaps more broadly.

How do we define democracy promotion? In Latin America the very idea of democracy promotion has been contested from the time it was first proposed. The term democracy promotion is most frequently used in what I will call a "value-neutral" sense, to refer to international engagement in and management of state

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23. Thomas Carothers, *The Backlash Against Democracy Promotion*, FOREIGN AFFAIRS (Mar./Apr. 2006).

capacity-building initiatives designed to strengthen democracy. Critics, however, see democracy promotion as intervention on behalf of a very particular form of “low-intensity” democracy tied to free market economics.²⁴ From either perspective, it is understood that democracy promotion is practiced by both governmental and nongovernmental actors, and is a central expression of what we might call soft power in the post-Cold War era.²⁵

The debate about democracy promotion derives from the mixed history of the practice. When we look at the historical record in Latin America, the reasons for this division are clear. The United States has a long track record of adverse actions justified by a democracy promotion discourse, which begin with intervention in the name of protecting the independence of our neighbors to the south and include participating in the overthrow of democratically elected leaders with socialist leanings, propping up authoritarian allies and funding death squads in Central America during the height of the Cold War.²⁶

From the late 1980s, U.S. democracy promotion has progressed into a kinder, gentler (yet still contested) form, focusing on electoral assistance and institution-building. However, the undemocratic history of United States political interference is very much alive in the collective memory of Latin Americans. This is something to keep in mind as we think about the development of international instruments and the current context for democracy promotion in the region. While I am sympathetic to critics who question the intent of democracy promotion, unlike some, I do not call for an end to the practice.

My analysis parts from the observation that democracy promotion will continue, simply because political processes in the Americas are increasingly transnationalized. Political change in the region is fueled not only by domestic actors and actions, but also by what occurs in key political centers (such as Washington, D.C.), at the meetings of regional and subregional organizations and even in the quasi-spatial dimension of the Internet. The construction of regional norms of democracy in the Americas is a multifaceted and uncontained process. No matter the backlash, regional democracy promotion is likely to continue in some form or another. The question is: what form it will take?

In part the form it takes will depend on the methods that are used. We can

24. Jonah Ginden & Kristen Weld, *Benevolence or Intervention? Spotlighting U.S. Soft Power*, 40 NACLA REPORT ON THE AMERICAS 1, 19 (Jan./Feb. 2007).

25. Here, I contrast soft power, persuasion through the use of diplomacy, with hard power such as military intervention or economic sanctions.

26. See PETER H. SMITH, *TALONS OF THE EAGLE* (2007) for the history of U.S. intervention in Latin America.

classify the democracy promotion “tools” currently used in the Americas into two categories. The first category includes the array of international “defense of democracy” instruments that have developed over time. The second refers to the practice of what I will call political aid.

Let us consider the international instruments for democracy promotion in some detail. The Organization of American States (OAS), the regional intergovernmental organization for the Americas, expanded its legalization of democracy norms in the 1990s. The region now has a more developed defense of democracy regime than at any other time in its history. Some of the elements of this regime include the OAS Office for the Promotion of Democracy (established in 1990). This office has monitored over 70 elections in the region since it was founded. In 1991, the organization passed the Santiago Commitment to Democracy,²⁷ in which states declared their determination to strengthen representative democracy. Resolution 1080,²⁸ also passed in 1991, specifies that the Permanent Council of the Organization must convene in the event of a sudden or irregular interruption of the democratic political institutional process. It is stipulated that such a meeting should happen within ten days and should result in some recommendation of action.

The Washington Protocol,²⁹ which came into effect in September 1997, authorizes the OAS, on a two-thirds member vote, to suspend any government that has seized power by force. Perhaps the most notable instrument is the Inter-American Democratic Charter (IADC),³⁰ adopted September 11, 2001. The IADC declares that “the peoples of the Americas have a right to democracy, their governments have an obligation to promote and defend it.” The IADC gives the OAS, by two-thirds vote, the authority to suspend member states experiencing an “unconstitutional interruption of the democratic order” thereby broadening, in essence, the Washington Protocol. It also specifies numerous elements of what is meant by representative democracy, including citizen participation, the rule of law, free and fair elections and effective separation of powers.

27. Organization of American States, *The Santiago Commitment to Democracy and the Renewal of the InterAmerican System*, June 4, 1991, AG/doc2734/91 (adopted at 3d plenary session).

28. Organization of American States, *Representative Democracy*, June 5, 1991, AG/Res. 1080 (XXI-O/91)(resolution adopted at the 5th plenary session).

29. Organization of American States, *Protocol of Amendments to the Charter of the Organization of American States*, entered into force Sept. 25, 1997, 33 I.L.M. 1005 [hereinafter *Protocol of Washington*].

30. Organization of American States, *Inter-American Democratic Charter*, Sept. 11, 2001, OAS Doc. OEA/Ser.P/AG/RES.1 (XXVIII E/01), 40 I.L.M. 1289.

There is ongoing conversation about deepening the Inter-American Democratic Charter. At the meeting of the Organization held in 2005 in Ft. Lauderdale, the United States circulated a draft proposal for the Declaration of Florida designed to clarify some of the provisions in the IADC. The draft suggested that democratically elected leaders who breached democratic practices could face sanctions under the OAS Charter. It called for ongoing monitoring and an assessment mechanism to determine when deterioration of democratic practices was underway.

The U.S. draft was rejected by a large majority of member states. Reportedly, only 6 of 34 states indicated signs of support in the assembly meeting. Many of the members present took the proposal as an attempt on the part of the United States to gain leverage for additional intervention in Venezuela.

The Declaration of Florida as ultimately passed provided only that the Secretary General should consult with the Permanent Council to “devise proposals for . . . timely initiatives” to address situations that “might affect the workings of the political process of democratic institutions.”³¹ The Declaration of Florida also lent encouragement to a competing proposal, by endorsing the continuing efforts of a working group to develop a proposal for an Inter-American Social Charter, an initiative to legalize norms to protect social and economic (rather than political) equality.

OAS instruments for defense of democracy are evolving. Some of the actions that have occurred under the rubric of the democratic charter, such as mediation strategies, or what Cooper and Legler have called “intervention without intervening”, have been quite effective.³² On the other hand, the application of OAS instruments has been mixed: they have not been evoked in all applicable cases, or applied with equal rigor.³³ For example, provisions of the Charter were not fully implemented in 2004 when elected President Aristide in Haiti was forced out of office by rebels and protesters.

It should be noted, though, that the OAS is not the only regional body that has

31. Organization of American States, Declaration of Florida: Delivering the Benefits of Democracy, adopted June 7, 2005. OAS Doc. AG/DEC. 41 (XXXV-O/O5) *available at* http://scm.oas.org/doc_public/ENGLISH/HIST_05/AG02863E06.doc.
32. ANDREW F. COOPER & THOMAS LEGLER, INTERVENTION WITHOUT INTERVENING: THE OAS DEFENSE AND PROMOTION OF DEMOCRACY IN THE AMERICAS (2006).
33. Resolution 1080 was invoked in Peru 1992, Guatemala 1996 and Paraguay 1996. The IADC was invoked in Venezuela 2002, Ecuador 2005 and Nicaragua 2005. For an extended analysis of the OAS record, *see* Dexter S. Boniface, *The OAS' Mixed Record, in* PROMOTING DEMOCRACY IN THE AMERICAS (Thomas Legler, Sharon F. Lean & Dexter S. Boniface eds., 2007).

institutionalized democracy norms. There is a body called the Rio Group, established in 1986, of which most nations of the Americas are members, excluding the United States. It was created as a specific alternative to the OAS, which at the time was perceived to be dominated by the United States. The Rio Group holds democracy as a criterion for membership. Mercosur, the southern market, established by the 1996 Ushuaia Declaration,³⁴ commits members to apply joint trade and economic sanctions against disruption of democratic institutions. This provision has been applied in Paraguay in 1996, for example. The Andean community together signed the Additional Protocol of Cartagena,³⁵ in 1998. Its provisions are quite similar to the Mercosur sanctions.

There is also CARICOM, the association of 16 Caribbean states. Its 1992 Charter of Civil Society³⁶ holds that states shall ensure the existence of a fair and open democratic system through the holding of free elections at reasonable intervals. The South American Community of Nations and another regional trading group called the Latin American Integration Association (ALADI) embrace democracy as a criterion for membership with relatively weaker mechanisms for enforcement.

Such international instruments, however, are really only one side of the story. The other main tool for democracy promotion is political aid to state and nonstate actors. Some political aid is bilateral, and some is transnational. Political aid is typically provided in the form of funding, supplies and technical assistance for elections, election officials, political parties, judiciaries, civic associations and police and security forces.

Significant bilateral political aid in the region originates with the U.S. State Department and the United States Agency for International Development, but the United States is by no means the only actor in this arena. Canada, for example, is increasingly involved in providing bilateral political aid for sustaining and supporting democratic institutions. The members of the European Union separately and together, as well as many other states (notably Japan, Sweden, and Norway) are common political aid providers to countries in the Americas.

34. Protocolo de Ushuaia Sobre Compromiso Democrático en El Mercosur, la República de Bolivia y la República de Chile, July 4, 1998 [hereinafter Protocol of Ushuaia], *available at* http://www.sice.oas.org/trade/mrcsr/ushuaia/ushuaia_p.asp.

35. Andean Community, Additional Protocol to the Cartagena Agreement, June 10, 2002 [hereinafter Andean Community Commitment to Democracy], *available at* <http://www.comunidadandina.org/INGLES/normativa/democracy.htm>.

36. Caribbean Community, Charter of Civil Society for the Caribbean Community, *available at* <http://www.itcilo.org/actrav/actrav-english/telearn/global/ilo/blokit/caricha.htm>.

There are also transnational political aid mechanisms, such as the Friends of the Democratic Charter which has its secretariat in the Carter Center's Americas program. This group brings together former elected officials, human rights officials and academic advisors to discuss ways to strengthen the principles put forward in the Inter-American Democratic Charter, make its triggers more specific, and strengthen its preventive capacity.

Finally there are south-south networks with international impact that can be considered within the rubric of transnational political aid. Specifically I am thinking of the Acuerdo de Lima (Lima Agreement),³⁷ signed in Lima, Peru in 2001 by nongovernmental civic organizations from across the region. The member organizations of this network all work to promote good governance and democratic consolidation. They exchange advice, program strategies and expertise through this network. They interact with "northern" nongovernmental grantees of the U.S. National Endowment for Democracy, but this network is primarily "south-south" in nature.

To summarize: there are relatively well-developed international instruments for democracy promotion in the Americas. The triggers are not clearly defined, but the instruments themselves have been used, although not consistently, in a variety of countries. The instruments are principally retroactive, they cannot be used to prevent crises, only spur international involvement when there is a clear and recognized problem. Political aid, on the other hand, is proactive. However, political aid has the potential to be more controversial. It is the political aid component of democracy promotion that critics of the practice denounce as interventionist and anti-democratic. Further, evaluations of political aid have found that the effect of political aid is minimal at best, and highly dependent on the character and capabilities of the individual administrators of such aid.³⁸

There are three main challenges in the current political context that shape our potential to use available tools for democracy promotion. The first challenge is the increasing number of cases of backsliding by democratically-elected leaders. This type of backsliding presents a challenge to the international community. In order to apply international instruments, we must be able to define the line that indicates a breach with democracy or constitutional order. The principal example we can

37. Lima Agreement, *available at* <http://www.acuerdodelima.org/index2.htm>.

38. Thomas Carothers, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE*. WASHINGTON, DC: Carnegie Endowment for International Peace, 1999; U.S. GENERAL ACCOUNTING OFFICE, *FOREIGN ASSISTANCE: U.S. DEMOCRACY PROGRAMS IN SIX LATIN AMERICAN COUNTRIES HAVE YIELDED MODEST RESULTS*, GAO-03-358 (2003).

look to right now is the case of Hugo Chávez in Venezuela. In late 2006, Chávez was granted the right to rule by decree for 18 months by a legislature that is entirely stacked with Chávez supporters due, in part, to the fact that the opposition boycotted the 2005 legislative elections. Is this a serious breach of democracy? Should the international community be involved, and if so, how?

The second contextual factor to think about is the challenge of undemocratic behavior by actors other than political leaders. We see in Latin America a rise of mass protests that have been so extensive as to displace democratically elected leaders from their offices; this type of action is quite distinct from your traditional military coup. For example, although elections are regularly held to determine officeholders in Ecuador, the last time a president of Ecuador finished a full term of office was over a decade ago. When and how should the international community be involved when mass protest begins to destabilize an elected government?

The third challenge is quite different from the first two. This challenge is represented by the efforts of actors in the new Latin American left to reconceptualize prevailing ideas of democracy, prioritizing popular democracy over representative democracy. This debate is tied into the proposal for development of an Inter-American Social Charter discussed earlier. It is a "problem" in the sense that the instruments and tools, and much of the assumptions of political aid that is provided in the region, are designed to support democracy conceptualized as representative democracy.

Consider the following two examples. Venezuela's Hugo Chávez has been recently cited disparaging the state of U.S.-style representative democracy: "if only the United States had democracy like what we have here, if only the American people could call a [popular] recall referendum."³⁹ In Mexico, Andres Manuel López Obrador, the second-place finisher in the highly contested presidential elections of July 2006 has refused to acknowledge the official results. In protest, he and his party held a separate presidential inauguration, and still claim to represent the legitimate government of Mexico.⁴⁰ His party, the Partido Revolucionario Democrático (PRD), was involved in the massive protests against the rising price of tortillas held across Mexico in early 2007. López Obrador and the PRD define their actions as popular democracy, and denounce the notion of political equality in

39. *Chavez Sets May Oil Takeover Date* (B.B.C. NEWS broadcast Feb. 2 2007), available at <http://news.bbc.co.uk/1/hi/world/americas/6322721.stm>.

40. See López Obrador's website for the "legitimate government of Mexico," available at <http://www.amlo.org.mx/index.html>.

the absence of social equality as a farce.

A key challenge for would-be democracy promoters is the growing disconnect between relatively narrow conceptions of procedural or representative democracy that many of our international instruments and tools are equipped to promote and defend, and the expectations Latin American citizens hold of democracy. Their expectations embody broader substantive notions of equality and effective representation.

That said, it is likely that legalization of democracy norms will continue, and the debate over definitions of democracy will be at the forefront of this process. I believe, however that political aid from the United States to Latin America may decrease in the near future, in part because in some places it will be resisted and in part because in other places there are other actors stepping in to provide proactive democracy assistance.

It is also important to note that despite the presence of notable challenges to democracy promotion in the region, there are examples that demonstrate durable and positive downstream effects of democracy promotion. The Peruvian civic association Transparencia, which anchors the Lima Agreement, benefited early on from extensive U.S. political aid and good coordination with officials from the OAS. Transparencia and many of its civic counterparts in the region now have over a decade of organizing experience, have become adept at monitoring their own elections, enjoy quite a lot of domestic prestige, and have diversified their sources of finance such that their principal funders include (domestic) governmental and private sector sources, followed by an array of international funders that do not include the United States as a principal.

Even if we are critical about the provision of political aid or skeptical about the democracy promotion discourse of the United States, we should not underestimate the democratic capabilities of local actors who have been supported by democracy promotion efforts, even U.S. political aid. And so, in that sense, I think that the Latin American cases demonstrate some room for optimism about democracy promotion, even in the face of the current backlash against it.

*Kathryn Stoner-Weiss, Panelist**

I should also probably start with the question of what a Russian, Eastern European specialist is doing on a democracy promotion panel. I am going to talk to you a little bit about what has happened in Russia over the last fifteen or so years and at the same time get us a little bit more engaged in whole question as to whether or not the United States should even be in this business. Larry mentioned that we have been in this business a very long time. But, we are not yet particularly good at it. And Iraq has thrown that into pretty sharp relief. But let us look at a couple of other places, like Russia for example, where we have not done so well either but failed in different ways.

Just to give you a sense of the scope of U.S. democracy promotion, in 2005, we spent about \$1.4 billion on democracy assistance. There is a proliferation of U.S. government institutions involved, too numerous to mention but the big ones of course National Endowment for Democracy, USAID. We also have lots of private agencies involved.

There is still not a lot of success, and Russia is a case of this. I want to back up and ask whether or not we should be doing this? As I mentioned, I do not think we should necessarily take it as a given that it is a good idea for the U.S. go out and promote democracy. Certainly a lot of people think it is not a good idea, this has also been a longstanding debate in United States foreign policy.

I am going to quickly review the moral reasons, economic reasons, and security reasons. The moral reasons — just a quick quote there from Winston Churchill basically saying it is the best of otherwise bad forms of government, meaning it is the best of the worst. Bram Inglehart, a sociologist from the University of Michigan, conducted a survey in 2005 on whether or not democracy is the best form of government. When you ask about whether or not we should promote democracy, it looks like it might be a more welcome enterprise than you might have otherwise suspected, and certainly post-Iraq, when this data was collected.

Governance advantages — essentially there are arguments that democracies are

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better at protecting basic human rights. They tend to respect international treaties more than non-democracies and to sign them more. They are better at constraining the power of the state. Democracies tend not to commit genocide, do not starve their people, and they are, because they are democracies, better at representing the will of the people. Other governance advantages are that democracies do not fight each other. This is the concept of democratic peace popularized by Michael Doyle⁴¹ and other scholars. And democracies are more stable, they are less prone to coups and of course having mechanisms for transferring power. I am going to talk about Russia in a few minutes, and you will note that a mechanism for transferring power is something that is lacking there in particular, which is what makes it unstable potentially in 2008 when President Putin is supposed to step down.

In regards to the point that democracies do not fight each other, I just want to emphasize there, because it is the closest thing we have to a lock I think, in political science. That is something that appears to apply across a broad historical timeframe and geographic timeframe, and it has certainly been accepted as a law of US foreign policy. You will hear that both President Clinton and President Bush have brought this up repeatedly in the last fifteen or so years. Democracies do not fight each other, therefore let us spread democracy around the world. There are some people who challenge that claim, but it is a pretty robust one, actually.

Lastly, economic advantages — democratic states tend to constrain creditors, that is an internal creditary state. So the more democratic institutions you have, something that Larry has called horizontal accountability, where the institutions of democracies, representative parliaments, check elected presidents, for example, you have internal auditing institutions. These can all do things like control corruption. Now this is a more controversial claim; I think if you checked in with citizens of Sweden or even Canada they would wonder whether or not democracies are effective at holding down taxes. But nonetheless, democracies are arguably more effective at holding down taxes than are autocracies, and of course better at securing property rights, broadly understood.

Another economic advantage is that democratic leaders need to produce economic results to stay in power. They have a performance legitimacy issue; if they want to stay in power, they have got to do something. Offer the population public goods and services and make the economy grow. Autocratic leaders, on the other hand, only usually need to satisfy a subset of the population. Maybe it is

41. See, e.g., Michael Doyle, *Liberalism and World Politics*, 80 Amer. Pol. Sci. R. 1151-69 (Dec. 1986).

property owners, maybe it is the military, but it is not universal. Democracies also can learn. They can adjust policies, stop failed policies, in a way that autocracies can not necessarily do.

And then the third set of economic advantages is the political stability that democracy tends to provide, promotes, and facilitates growth. I will not go into Latin America versus the United States, but I will just make this quick point that democracies may have slower growth, but it is steadier growth. Autocracies have both hares and turtles, that is, states that grow really quickly economically and some that lag. Like Zaire, for example, and China.

On average, democracies are more stable. So presumably what you would want is steady growth, not erratic growth, which is what autocracies tend to provide. So that is the economic argument really. Democracy in other places is good for the United States, because open markets and democracy go hand in hand. We had a trillion dollar windfall from the collapse of Communism, so it was a good thing economically. Referring to security reasons, every enemy of the United States was and is a dictatorship. So transformation of autocracies into democracies has made the U.S. safer. Even though this is hard, we are not very good at it, and our tools are limited.

Okay, so what happened in Russia? In 1996, Yeltsin danced his way into the presidency again. He makes it but he has a massive heart attack and had quadruple bypass surgery. But he turned 76 yesterday. He is now, I guess, the dowager president of the Russian Federation. Yeltsin was the first president of Russia, the first elected chief executive of Russia. And he presided over a very lively democracy, a raucous democracy if you will, one without limits, because there seemed to be no limits on a whole number of things. For example freedom of speech, very few limits on what could be put into print, what could be shown on television. There were very few limits in terms of business dealings and what was appropriate behavior. But the one area where Russia could have used many more limits was with law, because the law under Yeltsin was limited in its effect and in its implementation.

This helped to bring about disillusionment with democracy among the mass public under Yeltsin. So one of the reasons that he is dancing at a rock concert in 1996 so fiercely is because when he began his election campaign in January of 1996 to regain the Russian presidency for a second term, he had single digit approval ratings. Low 10 percent approval ratings, and miraculously thundered back and danced his way back into the presidency with just over 50 percent in a second round of voting.

Yeltsin resigned, surprisingly before his second term ended in December of 1999. He goes on television and basically apologizes to the Russian people. He says, what we thought would be easy, and I am quoting him directly here, “what we thought would be easy, constructing democracy and getting the economy to grow, turned out to be very difficult.” And so in March of 2000, he tells the Russian people I am now going to hand power over to my designated preferred successor, Vladimir Putin, whom you will elect. In August of 1999, just a few months earlier, Yeltsin had nominated him to parliament and had approved Putin to be the most recent of Yeltsin’s prime ministers. He had five prime ministers in very rapid succession over about an 18 month period, Putin was the fifth. Putin comes in and is elected in March of 2000.

We did not know what was coming in 2000, he talked about a dictatorship of law and he is a lawyer. We were not exactly sure what that meant, but Russians embraced that message over time. Because what Yeltsin had done was not build up rule of law in his country, and this has continued to be a problem. It is a problem for the growth of Russia’s democracy; it is also a problem for the consolidation of economic growth in Russia. So this was a welcome message.

The problem is that as he has instituted the dictatorship of law in Russia, since Putin came into power, we have started to see a sure decline in terms of the quality of democracy in Russia. In fact, in 2005 the Freedom House, for the first time moved Russia from the category in the middle here, “partly free” to the category of “not free.”⁴² And you can see that its compatriots here in this category are not exactly a distinguished band of states. Turkmenistan is down there with the lowest possible score. In 2006 I believe Russia’s score has dropped another half point, so it is at 6.0 and getting even lower, and increasingly competitive with central Asian dictatorships in terms of where it is going under Putin.

I raise this because this has all happened at a time that U.S. spending on democracy promotion under USAID, in particular the Agency for International Development, has declined. So, since 2000, USAID has spent less and less and less on things like political party development, on civil society development,⁴³ and just as the quality of democracy in Russia has declined, so that Russia can not even be considered a democracy any longer pretty much by any measure.

So is Russia lost or is there something that we can do to bring Russia back from this lack of democracy under Putin? It faces a couple of challenges, and it is

42. FREEDOM HOUSE, *supra* note 20.

43. See <http://www.usaid.gov> (follow “FY08 Budget” hyperlink, then hyperlinks to prior year budgets).

something that we are not actually very well equipped to deal with. As Larry mentioned to you, there are very few, in fact no, export resource dependent states whose economies are predominantly dependent on oil or gas exports, that are democracies. Well, Russia unfortunately has joined that group. It is the world's second-largest oil producer and exporter now, behind Saudi Arabia, and Russia's economy has been growing since 1999, growing on average at about a 7 percent rate.

So you can take these resource curves in the sense that since this money is flowing into the state, the state has very little interest in building up its infrastructural capacity with tax, and if it is not taxing people then it does not feel it has to be accountable to people. So you can see how this vicious cycle of resource dependence, and dependence on export revenues, is driving, or could be a possible driver, of a lack of democracy in Russia.

It is a very hard thing for us to fight against. The only thing we can do, I think, is sell our SUVs and drive cars that are better on gas and help Russia that way. Russia's elite state is very politically institutionalized, and this is one of the failures of our attempts at promoting democracy in Russia is that we did not focus enough on specifically the institutions of democracies like political parties that could really have bolstered it.

For example, how many of you in the room know that President Putin belongs to no political party whatsoever? There is one he favors, but he is not a member of it. Of course, Yeltsin also was not a member of a political party. They both felt that this would cheapen, in some way, the president and kept insisting that the president was above politics, which in a democracy, is of course, an absurd statement.

So did we fail with democracy promotion in Russia? Well, there was a virtual army of democracy assistance organizations active in Russia. You could trip over them in Moscow. I did a lot of work in the provinces in Russia. I tripped over a lot of them there too. I think probably expectations were perhaps too high, and I think that is the general problem in democracy promotion. For democracy promotion tools to work there really has to be a domestic constituency that is receptive to democracy. That is, to honor some of the agreements that Sharon spoke about, but they also used to make elections work so that they are actually meaningful, and electoral commissions function to monitor elections. And I think expectations were perhaps just too high to meet.

And I think ultimately Russians lost Russia, and Russian policymakers lost Russia. So you can not blame the U.S. for everything. But democracy assistance

could have been better, and we have a few tools left still. International organizations that have been involved with Russia, and I have been involved with this for the last 10 or 15 years, have ignored a lot of the evidence of superficial compliance to organizational norms. And the Organization for Security and Co-operation in Europe (OSCE), where I was consulting in November, actually has now realized that they were focusing too much on the forms of compliance rather than the substance. They feel very awkward about it and are looking for ways to get Russia to comply further, because it is turning into a real spoiler in the OSCE currently.

A lot depends on who does the democratizing. Too often we have people who are twenty-five years old or younger out there spreading the good word of democracy, and while they are extremely energetic and there may be compelling logistical reasons as to why they are the ones doing it, when you think of who promotes economic policy and market reform policy, it is not twenty-five-year-old economists. Rather, it is Jeff Sachs and people with far more experience.

Also, even though we are spending a lot, we are still not really spending enough. The U.S. actually did not spend the most in terms of democracy promotion in Russia, instead Germany did. And so there is also a lack of coordination among agencies. This lack of coordination is not only within our own agencies in the United States, but also within other international agencies with foreign governments who were active at the time, again were tripping over one another, coming up with programs that contradicted one another.

And then finally, and perhaps most importantly, there is a lack of political will in the domestic arena to democratize. Democracy, in Latin America in some ways, the way we understand democracy, is becoming a harder sell. If your economy is growing and your middle class is getting fat and happy, and that is what is happening in Russia, particularly in Moscow, then there is a lack of political will to make some hard choices, economically and politically, and create a more robust democracy. And I think this is the key issue.

But just because the task has been difficult, and we have been relatively unsuccessful in Russia, we should not give up. Russia is a huge country, and has, of course, no democratic history. It is an incredibly expansive country, and to try and govern it all from Moscow, which has been the case, in the absence of political institutions, is a mammoth task. And then add into the mix a variety of international organizations trying to get involved, you can see how difficult it would be. It has always been hard to govern, but even more so lately.

But we should not give up. We can learn from what has worked in other places.

In Serbia, Ukraine, and Georgia for the last five years we have had democratic breakthroughs. And I think it is particularly important in the next two years that we not give up on Russia and that actually far from cutting back our financial commitment to democracy promotion in Russia, we should be increasing it, especially now when President Putin has to make a decision as to whether or not he will run again in 2007, against what the constitution says. We also have a parliamentary election in December of this year in Russia, and we have no effective election monitoring. The OSCE is not being allowed in. The media has been muzzled by President Putin, and so now is exactly the time when we need to bolster efforts, within Russian civil society, to do election monitoring.

And then finally, some of the few bits of leverage that we still have are things like Russia's membership in the G8. It was an absolute fiasco this summer that Russia was hosting the G8. A lot of political officials in Europe and the United States were wringing their hand about this and how embarrassing it was, but ultimately they went to St. Petersburg nonetheless.⁴⁴ Actually it might be okay to let Russia into the World Trade Organization, and I would urge the U.S. government to do it sooner rather than later. Why? Open trade tends to promote democracy; it tends to promote more transparent politics as well.

So I will stop there, but as you can see, there is a huge challenge still in Russia. We did some things well, but we did a lot of things not so well. And we have a few tools left, but we have not really taken full advantage of them.

*Helen Stacy, Panelist**

As an international human rights lawyer, I see the task of democracy promotion abroad very much like the task of human rights promotion abroad. First of all, there is a moral issue. How do we justify a universal vision of the good life, as a matter of moral persuasion? Second, in the absence of any universal application of that single standard, how ought we to treat the other nation states of the world that do not agree with us? Finally, if we want to hang on to that idea of the vision of how the world should be, either in terms of democracy or human rights, what does that entitle us to do if we want to try and pursue that vision abroad?

44. See, e.g., Damian Grammaticus, *Russia Takes Over G8 Leadership*, available at <http://news.bbc.co.uk/2/hi/europe/4573388.stm>.

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Regrettably, the debacle of Iraq means that democracy promotion must today defend itself from claims of imperialism and empire. And it doesn't help that God and democracy promotion are spoken of in the same breath. In December last year, Orlando Patterson, asked in a piece in the New York Times whether the U.S. had really gone way astray by referencing to religious ideology when talking about democracy in Iraq.⁴⁵ Let me read excerpts from two of President Bush's speeches, one from his second inaugural speech, and another made in a speech made to Arab Americans sometime later. President Bush declared that he had: "complete confidence in the eventual triumph of freedom [in Iraq] because freedom is the permanent hope of mankind, the hunger in dark places, the longing of the soul."⁴⁶ Later, at the Arab-American conference, President Bush said: "No matter what your faith, freedom is God's gift to every person in every nation."⁴⁷

For better or worse, critics of the U.S. and the West are likely to connect this sort of messianic self-assurance about democracy with the disaster in Iraq and promotion *per se*. The hubris of the U.S.'s rhetoric presents liberal, political, and philosophical problems by jettisoning all of classical liberalism's reliance upon persuasion rather than coercion to spread liberal values. Democracy promotion, Iraq style, threatens to remove the very foundations of liberal thought as an ideology of consent, making it harder to persuade authoritarian regimes of the virtues and the advantages of human rights and political engagement. Every utterance President Bush makes about bringing freedom and liberty to Iraq is likely to put another nail in the coffin of promoting democracy abroad, perhaps by years, and, according to Larry, maybe by decades.

I think President Bush is, alas, drilling home the idea of military intervention in the name of democracy promotions. It risks also painting economic intervention as coercive. It suggests that democracy will simply open a Pandora's Box of civil chaos, sectarian violence, and death and destruction. But as an international lawyer, I want to remind you that the connection between invasion in the name of democracy was a very late justification, a necessary justificatory apologia in Iraq, simply because the U.S. had to scramble for an *ex post* rationale given the absence of any weapons of mass destruction. The notion of spreading democracy in Iraq needed to be raised as justification simply because there were no WMD. And yet, notwithstanding this almost accidental use of freedom to justify invasion in Iraq, the ensuing disaster is likely to be perceived as overreaching U.S. imperialism

45. Orlando Patterson, *God's Gift*, N.Y. TIMES, Dec. 19, 2006, at A33.

46. President George Bush, Second Inaugural Address (Jan. 20, 2005).

47. President George Bush, Speech to the Arab-American Conference (Apr. 28, 2003).

cloaked in high-sounding principles. So if the idea of an expressed right to democracy, or even just a democratic entitlement, is to be considered, it is worth thinking through some of the potential checks and balances that might have altered the course of history had they been utilized in Iraq.

I am going to focus on three different aspects of democracy promotion after or during Iraq, offered from my perspective as a believer in human rights. First, what can be said today about the status of democracy as a useful principle in international law that has acceptance among the nations of the world as a whole, fifteen years on, and a whole world away, from the initial euphoria, post-Cold War? Second, how did these developments impact the legitimate methods that contemporary international law uses to promote democracy abroad? Does the right to self determination under Article 21 of the U.N. Declaration of Human Rights, even if it might have developed into a *jus cogens* principle of the right to democracy, place a correlative duty on the international community to enforce it?⁴⁸ And who or what has the duty or the justification to enforce that right? The U.N.? A multilateral force like NATO? A unilateral force with or without the coalition of the willing? In other words, does international law today support intervention to introduce or restore democratic governance in the same way that international law seems to now, post Kosovo, support intervention to stop genocide? Finally, what sort of democracy should be promoted? If self determination or even democracy is a universal entitlement, then what sort of democracy should be promoted by international law?

First, the idea of democracy as a universal entitlement. Article 21 of the U.N. Charter, written in the very early days after World War II, talks only in terms of the right to take part in government, and that the will of the people shall be expressed in periodic and genuine elections held by secret vote or by equivalent free voting procedures.

Well, it is now well known that after the Cold War, a plethora of new constitutions from South Africa to the Eastern European states to Latin American states, created constitutions with a whole raft of human rights. Individual liberty was a centerpiece of these constitutions. Liberty and freedom were the rhetoric, but in fact the legal terminology was all based upon the individualism of human rights.

But clearly there was something about democracy that the non-democratic nations seemed to want. It was also clear that the Western world was increasingly

48. United Nations Universal Declaration of Human Rights, art. 21, Dec. 19, 1948, available at <http://www.un.org/Overview/rights.html>.

interested in the sorts of regimes that the formerly non-democratic states were going to constitute. Liberal internationalists were pointing to evidence of a growing recognition of an entitlement to democracy. In other words, democracy as the *modus vivendi* was now virtually unquestioned in the post-Cold War world. In 1992, Thomas Franck in his seminal article made the claim that there was now an emerging norm of an entitlement to democracy.⁴⁹ And less sweepingly, Greg made the suggestion that there may have been an emerging norm to free and fair elections. In any event, it would seem that the idea of democracy promotion through at least consensual agreements, whether that is the EU or Latin American states, was and is still taking place.

Larry Diamond in 2002 made the point that three of every five independent states in the world were democracies. We have heard from him just today that these statistics show backsliding. So even with the current plateaued state of democratization worldwide, human rights seems to be at least paper commitments that even cash-strapped governments are making around the world. But as we know, paper agreements don't necessarily lead to actual state practice. To be a *jus cogens* principle, democracy would need to be established practice in the majority of nation states. Given the relative newness of democracy as a global principle and a given that it is far from established, I don't think there is enough evidence to support the idea that there is today a principle of a right to democracy.

Secondly then, the use of international law to support democracy promotion needs to canvas whether international law ought to support intervention to either introduce or to restore democratic governance. Coming from my antipodean part of the world, the intervention poster child was East Timor in 1999. That intervention was in the name of preventing genocide. It was an intervention, ultimately, that was permitted by Indonesia, although under great pressure from the rest of the world. East Timor was granted sovereign status in 2002.

But East Timor, like many of the new governments of the world, has hit some rough spots. As recently as last year there was another coup — and a re-intervention by forces from at least four other nations of the world. However, when analysts ask why East Timor seems unable to stabilize itself, no one seems to ask if some of these problems may arise because democracy was imposed from the outside. There has always been the assumption that East Timor's social and economic problems were generated by over 200 years or so of Portuguese colonization and then more recently from Indonesian colonization. These endemic

49. Franck, *supra* note 11.

and indigenous issues are assumed to be the cause of East Timor's current difficulty in forming a stable democracy. The question is not asked whether one of the causes of today's problems is that exogenous pressures to perform to a certain democratic standard won't necessarily resonate with domestic preferences.

So I think the answer to the question whether invasion is ever justified on the basis of the democratic entitlement clearly has to be that it is not – not simply because democracy at the point of a gun simply flies in the face of classical liberal ideals of persuasion rather than coercion, but because as a practical matter, external introduction of democracy is less likely to stick than internal political formations.

So then, finally, the question of the fate of democracy promotion after Iraq has three answers. First, I would hope that post-Iraq, there might be increased pressure for reforms of international or multinational organizations. It strikes me that the U.S. coalition of the willing, going into Iraq, has reinforced the ineffective nature of international organizations and that there needs to be either a renewed attempt to have multilateral action take place in a more effective way, either at the U.N. level or within multinational organizations such as NATO.

Secondly, I would like to point out that democracy promotion, especially when it has been coming from the U.S., and especially as it has come through the aegis of Iraq, has tended to focus on the rhetoric of freedom and liberty. This has overlooked some very important aspects of democracy promotion. Democracy is just one of a whole raft of human rights in the United Nations Declaration of Human Rights, and democracy promotion that has been premised on the idea of liberty and freedom has, of necessity, needed to focus on civil and political human rights. There are other human rights, social, economic, and cultural rights, which are crucial to the maintenance, to the very foundation of political and civil human rights that underwrites democratic promotion. So my hope during the post-Iraq is that there could be a reexamination of the core values of democracy. Less focus on the formal trappings of democracy, elections, treaties, and agreements that talk about formal rights, and much more focus on the substantive underpinnings of what makes a society actually tip over toward a democratic society.

And finally, my question to the entire panel here is: just what sort of definition of democracy ought to be talked about post-Iraq? Is there simply going to be one version of democracy, the sort of democracy that Sharon referred to, which is the preferred ideal of democracy, the sort of representative democracy with all the institutions that we in the West tend to be familiar with? Or does there need to be a re-assessment of different types of democracy, different types of self-determination that might just as equally fulfill the sorts of expectations of how we

might want a society to run itself, so that citizens are able to rely on peace and security and food and education? Is there a range of types of democracy that we might want to be exploring that lie outside what we know so well, and which might nevertheless be able to provide people with some of the basic fundamental human rights?

Question from the Audience: The title of the panel is Democracy Promotion After Iraq, and so from the different panelists I wasn't sure I could draw the thread that I'm interested in, which is can you trace for your particular area, Russia for instance or Latin America, has the U.S. experiment in Iraq had tangible results? Is the state of democracy in Russia any worse off because of our mistakes in Iraq, or is there really no relationship that we could persuasively draw. Are we going to be in the same situation or not? And the same thing in Latin America if you can answer it, or in other parts of the world.

Kathryn Stoner-Weiss: I can certainly take it in Russia. It has absolutely done a tremendous amount of damage in the sense that we do not have the same sorts of leverage that we had before and the same amount of respect. I mean the most direct piece of evidence was President Bush's news conference with President Putin about three months ago where Bush attempted to be somewhat critical of Russia's democracy and President Putin seized that opportunity instantly and said well we would not want to have democracy that looks like Iraq. The other thing that it has done, of course, is make Russia much more powerful vis-à-vis Iran, and its relationship with Iran has become even more important. The fact that Russia is not a democracy, has not turned out to be the friend we thought it was and is now increasingly an ally of Iran has done further damage to our position. Also just in terms of funds available for democracy promotion, funds are not endless or boundless. And certainly attention has not been focused on Russia, so this is another very clear and direct effect, negative effects for sure.

Sharon Lean: I will just second some of what you were saying in terms of the Latin American case. I mean certainly the debacle in Iraq has contributed to the success of Hugo Chavez's anti-U.S. rhetoric in Venezuela, and sort of added fuel to the fire and credibility. I cannot remember the cartoonist, but I recently clipped a clever cartoon in which two Cubans are portrayed talking to one another about how it looks like Fidel is finally near his end. The other Cuban says, now the U.S. will be able to step in and really bring us democracy. And the first one says, like in Iraq? And then the second one says, "Viva Castro!"

So there is a bit of a ripple there. The only difference I would say is that I think the great funding gap is also true in the Latin American case. There are some

particularly contentious cases in Latin America. It might be a good thing at the moment that we do not have as much resources at our disposal to pour into the situation in Venezuela, for example. Many Latin Americans will tell you that the only reason we have not seen more forceful action, is that the forces are not available. That is, I think, an overly pessimistic view of what the latitude of real engagement might be.

Larry Diamond: The effects in the Middle East have been ambiguous. Early on they had an inspiring effect. You can not deny that the example of Iraqis going to the polls three times, defying great odds in terms of violence and terrorism, voting in massive numbers, and in a very inspiring way, in January of 2005 had effects in the region. And you can cite quotes of people saying, well if they can have it in Iraq why can we not have it here? But as this has unfolded and the bottom has fallen out of the security situation, people have seen that the effect has been intense ethnic and sectarian polarization, and a deepening of the instability in the country. I think it has actually strengthened the hands of autocrats in the region, who have said you want democracy, you want unfettered competition, look next door at Iraq. Is that what you want? And people have backed away from it, even democrats, liberals, friends of ours in the region, have begun to back away from it in fear.

This has diverted our attention from settling the Palestinian/Israeli conflict, where I think we are not going to get a breakthrough to democracy in the region until we turn the corner on that. A real breakthrough. So on balance, I think it has been quite negative, but there was a time when it appeared to have a certain positive diffusing spillover arc to it.

Helen Stacy: It is an interesting question. I guess we have to wait and see what ultimately the effect is going to be, but I am reminded of a talk the Chief Prosecutor of the International Criminal Court, Luis Moreno-Ocampo gave at Stanford last week.⁵⁰ He made the point that when the U.S. initially did not sign on to the International Criminal Court treaty,⁵¹ there was concern that this would destabilize international support for the ICC. Last week he made the point that the geopolitical record of the U.S. during this Administration, the fact that the U.S. is not a party to the Treaty of Rome reflects much better on the ICC because who would want to be in bed with the U.S. anyway.

50. Luis Moreno-Ocampo, Chief Prosecutor, International Criminal Court, Address at The Stanford Film Lab, Stanford University (Jan. 30, 2007).

51. Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999 (U.S. signed the Treaty on Dec. 31, 2000, but declared that it did not intend to become a party to the Treaty, and has no legal obligations arising from the U.S. signature).

So who knows what is going to happen geopolitically. But what the Iraq debacle might do is force the question of what are the elements of democracy that need to be promoted, and what is democracy. Remember, the U.S. did not go into Iraq to promote democracy. Hopefully Iraq may encourage reflection on the ex post use of excuses of high principles for geopolitical or self-interest action. And Iraq is having the effect of really causing a debate amongst the public in countries that do not have anything like self determination, about precisely what sort of self determination they ought to be pressuring their governments for or seeking external help for.